

ENTERED

October 18, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ELIAZAR BENAVIDEZ, *et al*,

Plaintiffs,

VS.

UNITED PROPERTY & CASUALTY
INSURANCE CO.,

Defendant.

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CIVIL ACTION NO. 2:19-CV-232

ORDER

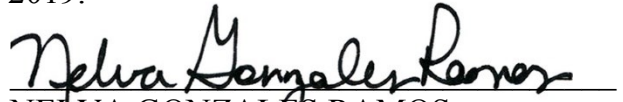
Before the Court is Defendant's Plea in Abatement (D.E. 6) and Plaintiffs' response (D.E. 7). After due consideration, the Court finds that Plaintiff's claim for attorney's fees does not comply with Texas Insurance Code § 542A.003(b)(3) in that it does not state that the amount claimed is "calculated by multiplying the number of hours actually worked by the claimant's attorney, as of the date the notice is given and as reflected in contemporaneously kept time records, by an hourly rate that is customary for similar legal services."

While the amount claimed for attorney's fees need not set out the calculation in detail and need not quote the statute, it must be accompanied by an averment that the amount was arrived at through a customary hourly rate for time recorded. While Plaintiff's letter can be read as having arrived at the fees through an hourly rate, the language accompanying the claim creates an ambiguity by its reference to a contingency fee contract. And the reduction in the fee amount from a prior notice letter only adds to the confusion.

Therefore, the Court **GRANTS** the motion (D.E. 6) and **ORDERS** Plaintiff to clarify this matter by **filing with the Court** on or before **October 25, 2019**, an advisory stating the amount of the fees claimed and whether they were calculated as required by statute. **Failure to file this advisory by the deadline set may be taken as a failure to prosecute this case.**

The Court **ABATES** the case until December 16, 2019, at which time the case will be reinstated without further order. The initial pretrial conference previously set for November 14, 2019, is **RESET** to **December 18, 2019 at 9:00 a.m.**

ORDERED this 18th day of October, 2019.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE